



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 24, 1995

Mr. Ivan J. Mlachak  
Feldman & Associates  
12 Greenway Plaza, Suite 1202  
Houston, Texas 77046

OR95-664

Dear Mr. Mlachak:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act. Your request was assigned ID# 30894.

The Fort Bend Independent School District (the "district") received a request for documents relating to the hiring of the principal at Ridgemont Elementary School. In particular, the requestor seeks:

1. the scores of the top applicants rated by the Screening Committee,
2. the scores of applicants rated by the Interview Committee, and
3. the final recommendation by this the Interview Committee prior to School Board Trustee approval.

We understand that the district has agreed to provide the requestor with the information requested in item 3. We also understand that the documents submitted to this office numbered B-1 and B-3 are public and that the district intends to release them to the requestor. The district claims that sections 552.101, 552.102, and 552.111 except the documents requested in items 1 and 2 from disclosure. We have considered these exceptions and have reviewed the documents at issue.

You state that certain documents requested, the Interview Committee notes, did not exist at the time of the request. The Open Records Act does not require a governmental body to disclose information that does not exist at the time it receives a request. Open Records Decision No. 452 (1986). Therefore, if the Interview Committee notes were not in existence at the time of the request, they are not subject to the request.

Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 (1993) at 5-6.

You contend that "the choice for an important position such as principal is a policy of the entire school district." We disagree. The information at issue pertains to an internal administrative and personnel matter, that is, the evaluation of candidates for the position of elementary school principal, and does not touch upon the mission objectives of the district. Accordingly, we conclude that section 552.111 of the Government Code does not except the requested information from required public disclosure.

Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. For information to be protected from public disclosure under the common-law right of privacy as section 552.101 incorporates it, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The *Industrial Foundation* court stated that

information...is excepted from mandatory disclosure under Section [552.101] as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

540 S.W.2d at 685; Open Records Decision Nos. 611 (1992) at 1, 142 (1976) at 4 (construing former V.T.C.S. art. 6252-17a, § 3(a)(1)). In *Industrial Foundation*, the Texas Supreme Court considered intimate and embarrassing information such as that relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

Section 552.102 protects personnel file information only if its release would cause an invasion of privacy under the test articulated for common-law privacy under section 552.101. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.) (court ruled that test to be applied in decision under statutory

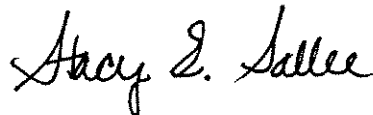
predecessor to section 552.102 was the same as that delineated in *Industrial Found.* for statutory predecessor to § 552.101). Accordingly, we will consider the arguments for withholding information from required public disclosure under section 552.101 and section 552.102 together.

Generally, the public has a legitimate interest in the job qualifications of public employees. Open Records Decision Nos. 626 (1994), 470 (1987). Information previously held by this office not to be protected by common-law privacy interests includes, for example, applicants' and employees' educational training; names and addresses of former employers, dates of employment, kind of work, salary, and reasons for leaving; names, occupations, and phone numbers of character references; job preferences or ability; birth dates, height, weight, and marital status. Open Records Decision Nos. 626 (1994), 455 (1987). We conclude that the information submitted does not contain highly embarrassing or intimate information. Additionally, the information is of legitimate public interest, as you acknowledge in your letter: "[T]he selection of the school principal, for example, is of interest to all the citizens of the school district." Accordingly, this information may not be withheld from required public disclosure under sections 552.101 or 552.102.

Finally, you claim that certain of the information is confidential under sections 552.111 and 552.101 because members of the screening committee "have been informed that their work on the committee will be held confidential." We note, however, that information is not confidential under the Open Records Act simply because the party submitting it anticipates or requests that it be kept confidential. Open Records Decision No. 479 (1987). You have not cited any law, nor are we aware of any, that makes the work of the screening committee confidential. Accordingly, we conclude that the sheriff's department may not withhold the requested information under section 552.101 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script that reads "Stacy E. Sallee".

Stacy E. Sallee  
Assistant Attorney General  
Open Government Section

Ref.: ID# 30894

Enclosures: Submitted documents

cc: Ms. Rhonda Jones  
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(w/o enclosures)